

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair - Present
Aaron Perry, Vice Chair - Present
Scott Diffenderfer - Present
Jacqueline Lalonde - Present
Rick Kendle - Present
Alex Fernandez - Present
Richard "Rick" J. Preira - Absent

Staff:

Donald Papy, Chief Deputy City Attorney - Present Debora Turner, First Assistant City Attorney - Present Rafael E. Granado, City Clerk - Present Liliam Hatfield, OAV, City Clerk's Office - Present

PUBLIC

Dr. Morris Sunshine

MINUTES

Monday, August 5, 2013 at 4:40 p.m.
Commission Chambers, Third Floor, City Hall
Email: CharterReview@miamibeachfl.gov

Special Note: In order to ensure adequate consideration, if necessary, the members of the Charter Review & Revision Board may move any agenda item to another meeting date. In addition, the members of the Charter Review & Revision Board may, at their discretion, adjourn the Charter Review & Revision Board meeting without reaching all agenda items.

Meeting called to order at 4:40 p.m., by Chair Zack.

Roll call taken by Rafael E. Granado, City Clerk; Absent: Member Preira.

1. Accept Minutes Of The July 15, 2013 Charter Review & Revision Board Meeting.

Motion by Member Fernandez to approve the minutes as amended; seconded by Vice-Chair Perry; Voice-vote: 6-0. Absent: Member Preira. City Clerk Rafael Granado stated that minor revisions had been made by the City Attorney's Office and distributed on the dais.

Debora Turner, First Assistant City Attorney clarified that the revisions deal with Commissioner Góngora's proposals; the two amendments to the Bill of Rights, and the one amendment to the Charter, which was the unnumbered Charter amendment provided at the last meeting.

2. Continuation of Discussion of the Citizens' Bill of Rights

- a) Preservation Of The Resources Of The Beach Proponent Rick Preira. Item deferred.
- b) Mandate That Employees Should Be Courteous To Citizens Proponent Stephen Zack.

Chair Zack suggested that the Administration include this mandate as part of the evaluation process, rather than in the Charter.

Member Fernandez suggested incorporating that citizens and taxpayers should have fair access to speak with City officials, as a basic right.

Vice-Chair Perry explained that it is a culture change that is needed; in private companies, an employee being courteous is a priority, and perhaps this Board can suggest to the City Manager to continue working in improving this culture in the City.

3. Discussion Regarding Neighborhood Association proposed by Terry Bienstock

Chair Zack asked if there were further discussions held with Mr. Bienstock and Miami Beach United. Debora Turner, First Assistant City Attorney, stated that there were to be discussions with Gary Held, Esq., as to how to define homeowners associations. Mr. Held is out for a few weeks, and it is expected that he and representatives of Miami Beach United will discuss this issue by the end of August.

Chair Zack stated that there is nothing this committee is responsible for voting on at this time. Member Lalonde agreed and suggested that this issue come back when there was additional information.

Member Fernandez explained that the City Manager's Office and City Attorney's Office had concerns with the existing language from Miami Beach United.

Rafael E. Granado, City Clerk, stated that the motion during the July 15, 2013 Charter Review Meeting was by Member Lalonde to send back the item to the City Attorney's Office for them to meet with members of Miami Beach United and draft revised language. The vote on that motion was 5-0. **Gary Held and Joe Jimenez, Assistant City Manager, to handle.**

4. New Business

Discussion held regarding meeting schedule and reporting to the City Commission. Chair Zack asked what did the City Commission needed from them as far as a report is concerned. City Clerk Granado explained that at the last meeting, the Board agreed to continue to work and possibly discuss schedule of upcoming elections. For that reason, he distributed the 2014 Election Cycle. He also noted that handouts were distributed, which include all the Resolutions with official ballot questions adopted by the City Commission at its Commission Meeting of July 17, 2013 pertaining to Charter amendments.

Debora Turner, First Assistant City Attorney, explained the ballot questions and read the Resolution titles:

2013-28296

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A Special Election To Be Held On Tuesday, November 5, 2013, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach An Advisory, Now Binding Straw Ballot Question Asking Whether The City Commission Should Adopt A Resolution Urging The Federal Government And The Florida Legislature To Decriminalize And Authorize The Medicinal Use Of Marijuana.

2013-28297

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A Special Election To Be Held On Tuesday, November 5, 2013, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach A Question Asking Whether City Charter Section 1.03(B) Requiring Majority Voter Approval Before The City's Sale, Lease Exceeding Ten Years, Exchange Or Conveyance Of Convention Center Parking Lots Should Be Changed To Require 60% Voter Approval Instead, And To Include Convention Center Campus" (All City-Owned Property Within Civic And Convention Center District Except Convention Center And Carl Fisher Clubhouse) Within The Category Of City-Owned Properties Subject To 60% Voter Approval Requirement, And Clarifying That This Charter Change Is Inapplicable To The Convention Center Project" Ballot Question (To Be Presented Simultaneously On The November 5, 2013 Ballot).

2013-28298

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A Special Election To Be Held On Tuesday, November 5, 2013, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach A Question Asking Whether The City Should Enter Into 99 Year Leases With South Beach Arts Culture Entertainment ("Tishman") Providing For Payment To The City Of Fair Market Rent On These City Properties:

- Convention Center Parking Lots;
- Convention Center Drive;
- Portions Of Convention Center, Center's Air Rights And Parking Spaces;
- 17th Street Garage Site's Ground Floor ("Garage"):

For Tishman's Development Thereon Of:

- 800 Room Hotel:
- 20,000 Square Feet Retail/Restaurants North Of 17th Street;
- 70,000 Square Feet Retail/Restaurants In The Garage?

2013-28299

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A November 5, 2013 Special Election, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach, Florida A Question Asking Whether Paragraph A(17) Of The Miami Beach City Charter Citizens' Bill Of Rights Should Be Created Prohibiting Discrimination By The City Of Miami Beach In Its Employment Practices And Benefits Offered Based Upon An Employee Or Applicant's Race, Color, National Origin, Religion, Gender, Sexual Orientation, Gender Identity, Disability, Marital Status, Familial Status, Or Age.

2013-28287

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A November 5, 2013 Special Election, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach, Florida A Question Asking Whether Section 1.07 Of The Miami Beach City Charter Should Be Created Requiring A Majority Vote In A Citywide Election To Repeal, Diminish, Or Otherwise Negatively Impact A Right Or Duty Established In Miami Beach City Code Chapter 62 ("Human Relations") That Inures To The Benefit Of A Member Of The Classification Categories Of Race, Color, National Origin, Religion, Sex, Gender Identity, Sexual Orientation, Disability, Marital Status, Familial Status, And Age As Defined In Miami Beach City Code Section 62-31.

Chair Zack wants to understand what the effect on the current negotiations on the Convention Center would be, if these two ballot questions relating to the Convention Center pass (2013-28297 and 2013-28298).

Debora Turner, First Assistant City Attorney, informed the Board members that there is current litigation and an action was recently filed by the City on this matter. The City hopes that the Judge will answer the question as to what language will be on the ballot; how it would affect the Tishman group, and if the Let Miami Beach Decide ballot question passes (2013-28297), would the Tishman project be subject to it.

Vice-Chair Perry asked if Let Miami Beach Decide's ballot question (2013-28297) is approved by the voters, would it immediately affect the current Convection Center project, thus requiring 60% voter approval for the Tishman referendum to pass?

Donald Papy, Chief Deputy City Attorney, stated that this question is being litigated and will be sorted out in Court. Discussion continued. The City Attorney's Office has opined that the ballot question proposed by Let Miami Beach Decide (2013-28297) is prospective, and the change is inapplicable to the Convention Center project, but the final decision will be made by the Court.

Member Fernandez suggested that Chair Zack and Don Papy meet and discuss this issue in another forum. Discussion continued.

2013-28302

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A November 5, 2013 Special Election, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach, Florida A Question Asking Whether Paragraph A(20) Of The Miami Beach City Charter Citizens' Bill Of Rights Should Be Created To Acknowledge The Purpose And Duties Of The City's Administration As Assisting Condominium And Co-Op Owners To Navigate Through The City's Permitting Process; Facilitate Resolution Of Other Condominium-Related Issues With Other Outside Agencies; And Act As A Liaison Between Condominium Or Coop Owners, Management Firms And The City.

2013-28303

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A November 5, 2013 Special Election, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach, Florida A Question Asking Whether Paragraph A(19) Of The Miami Beach City Charter Citizens' Bill Of

Rights Should Be Created To Set Forth Therein The City Of Miami Beach's Policy To Cooperate With The Miami-Dade County Public Schools, And With Other Appropriate Governmental Agencies, Which Will Strive To Improve The Quality And Quantity Of Public Educational Facilities Available To The Citizenry Of The City Of Miami Beach, Florida.

Chair Zack stated that he is not sure the ballot questions in 2013-28302 and 2013-28303 should be in the Citizens' Bill of Rights. Member Lalonde explained that these Resolutions were adopted at the request of Commissioner Libbin.

Member Kendle stated that they should be mindful of the enforceability clauses that Miami Beach United is now bringing forward, because if such a clause passes, anyone can come forward and have a right of enforcement even with the two new proposals in 2013-28302 and 2013-28303.

City Clerk Granado announced that Rick Kendle, Alex Fernandez and Jacqueline Lalonde were at the Commission Meeting on July 17, 2013 where these proposed Charter amendments were discussed and provided their opinions and information.

Chair Zack asked what "public schools" (2013-28303) has to do with the Citizens' Bill of Rights? In his opinion, this is in the wrong place. He suggested that a letter be drafted to the Commission.

Debora Turner, First Assistant City Attorney, stated that Commissioner Libbin proposed the Resolution and it was adopted by the City Commission.

Discussion held.

Member Fernandez explained that some of these issues do not originate from an elected official, but rather from an advisory committee and it works its way up. He cited Resolution 2013-28287 and 2013-28299 as examples, which had been originally advocated by the Gay, Lesbian, Bisexual and Transgender (GLBT) Committee.

Chair Zack reiterated that this language (2013-28302 and 2013-28303) does not belong in the Citizens' Bill of Rights. Prohibiting discrimination belongs in the Bill of Rights. However, these two issues (2013-28302 and 2013-28303), although they may be appropriate for inclusion in the Charter, he recommends a different placement in the Charter, as the provisions of the Citizens' Bill of Rights are a listing of the fundamental rights of the citizens of Miami Beach and these two Resolutions do not rise to that level.

Discussion held regarding rescinding Resolutions and deadlines for submission to Elections.

Member Fernandez agreed with Member Kendle that during election years, when you have candidates running for office, any Charter changes should go through the Charter Review Board. However, the CRB only meets every ten years, and there may be important business to fix which cannot be delayed. Mr. Fernandez agreed that the Commission should not politicize the Charter.

Member Lalonde stated, for the record, that she asked Commissioner Libbin to bring this forward to the CRB, but her request was denied.

Chair Zack stated that this Board has received a number of questions for discussion, but these two these Resolutions (2013-28302 and 2013-28303) were not sent to this Board. He suggested writing a letter to the Mayor and City Commissioners stating that as the Charter Review Board, they would like to have the opportunity to review those questions, and give their input. It is clear that these ballots (2013-28302 and 2013-28303) may be appropriate for the Charter, but these should not be part in the Citizens' Bill of Rights.

Member Lalonde agreed with Chair Zack, and added that a friendly letter should be sent asking if in fact they were to have a special Commission Meeting prior to their regular September 11, 2013 meeting, would they take this issue up to refer to these two proposed Charter amendments (2013-28302 and 2013-28303) to the CRB. She seconded the motion.

Member Fernandez believes that the City Commission as a body should be able to send Charter Amendments directly to the ballot. This year the CRB is convened and he agrees that the City Commission should submit any proposed Charter amendment to the CRB, but in other years, when the CRB is not in place, the City Commission should be able to act as it deems necessary.

MOTION BY ACCLAMATION

Motion reiterated by Chair Zack, to draft a friendly letter to the Mayor and City Commission, and inform them that they will be please to discuss these items and any other items they might want to bring forth. He added that what is in the Citizens' Bill of Rights is of narrow focus, and these two provisions regarding Public Schools and Condominiums, should be considered in the Charter, not in the Bill of Rights. The Citizens' Bill of Rights is a fundamental right of the citizens of Miami Beach; these Resolutions as adopted are not. He asked that a letter be drafted and circulated for Board member's approval.

Chair Zack asked if there was a need for an extension of jurisdiction, and asked for a list of pending items for discussion. Member Fernandez also asked that the Clerk reference his memorandum from April 30, 2013 with his referrals in the next Agenda. Rafael E. Granado, City Clerk, will provide a list of all items discussed, but that have not come to conclusion.

Discussion held regarding additional scheduled meetings. No additional meetings were scheduled.

Request to add items at the August 19, 2013 Agenda

Chair Zack requested to have traffic representatives present at the August 19, 2013 CRB Meeting to discuss the severe traffic issues. He explained that during certain events, it is almost impossible to get to Miami Beach. He suggested that any event that is held on Miami Beach should have a traffic plan.

Member Fernandez stated that at times the event organizers have nothing to do with Miami Beach, as they are private events, such as the Memorial Day Weekend (Urban Beach Weekend).

Member Diffenderfer explained that the Transportation Committee (TPC) has discussed this for years, and the City issues permits and creates venues; the City has been very irresponsible with traffic planning. They are building parking structures everywhere, but they do not deal with traffic situation.

Member Lalonde stated that there does not seem to be a sound solution, because there is not enough information. She suggested having someone from the TPC present to the Board. Discussion continued.

Vice-Chair Perry believes that traffic is a concern and they need to look at it in a more global level; by looking at connectivity with Miami Beach and the cities across the bay, light rail, etc. He is concerned about creating rules; there are many special events going on at one time and perhaps there could be a fee that participants pay to find a cure for this problem, but to have individual event owners have their own traffic plan, he does not think that is going to work.

Member Fernandez added that they could propose recommendations for the traffic situation not to get worse, but the City is building more and approving more clubs, and this is what brings more traffic; it is a growth that is out of scale for the City, and he does not know how to control that growth through the CRB. He feels that they cannot allow the City to keep increasing density until a viable solution for public transportation is found, and for public garages, and that is his frustration with this issue.

Member Lalonde reiterated that this is not in the purview of this Committee, and there is not enough information.

Chair Zack suggested adding language to the Citizens' Bill of Rights stating that the citizens of Miami Beach have the right to reasonable access to its road. This means that when a new project comes up, it has to show that it will not affect the roads and the City should issue permit for every event over 100 people and let the public know how this will affect the traffic. It seems that they are killing the "golden goose." Discussion continued.

Member Kendle explained that if they are talking about an event, that is one thing; if they are talking about the Planning Board, there is some regulation that the Law Department frequently cites that the Planning Board cannot consider traffic as a part of the project's review.

Member Fernandez would like to see in the Charter the powers that the Planning Board has, since this board approves projects with increased density that affect traffic. He requested to see the Charter and powers of the Planning Board having to do with density and what is their clear position. **Richard Lorber to handle.**

Member Diffenderfer stated that the City Commission makes decisions without consulting with the TPC committee. Discussion was held. The TPC suggested obtaining a traffic plan for the Convention Center project.

Member Kendle also requested that the TPC come forward and present to the Board with their recommendations. He also stated that the Planning Board approves plans that will bring more traffic to the City. Discussion held.

Donald Papy, Chief Deputy City Attorney, also suggested inviting the Administration, William Cary and Max Sklar to coordinate efforts in finding a solution to the problem. **Rafael E. Granado to handle.**

Discussion continued.

MOTION TO TABLE THE TRAFFIC ISSUE UNTIL SEPTEMBER

Motion by Member Lalonde; seconded by Member Fernandez to table the item at this time, and invite the Transportation and Parking Committee to make a formal presentation with their recommendations on the traffic issues facing the City at a September CRB meeting. Absent: Member Preira. Rafael E. Granado to notify Mark Weithorn as suggested by Member Diffenderfer.

Amendments

Members Fernandez and Kendle made friendly amendments to include the Planning Board, and ask Transit Miami to send some Charter recommendations. **Notify Gary Held, William Cary, Max Sklar.**

Chair Zack asked if anyone objected to adding to the Citizens' Bill of Rights "that citizens of Miami Beach have the right to reasonable access to roads." **Item to be placed in the September Agenda.**

- 5. Over Scale Development in Residential Areas Proponent Stephen Zack, Chair Member Fernandez explained that this item goes hand in hand with what he was talking about the power and authority of the Planning Board, and where the decisions should be made.
- **6. Preserving the Historical Value of Miami Beach Proponent Terry Bienstock**Chair Zack requested that Mr. Bienstock be invited at the August 19, 2013 CRB Meeting.

Member Lalonde explained that she is concerned that 99% of the folks in the country rely on their homes to make sure they do not slip into poverty; a person's home is usually their largest asset. The current proposal to have the City involuntarily declare private homes as historic is very concerning to her, as it greatly interferes with property rights. The proposal calls that before a home is demolished it must go through the Design Review Board and the Historic Preservation Board for them to consider if the home is historic. She is concerned that they will rubberstamp every home as "historic," which will be a huge interference with personal property rights. The City has to be mindful that this is a potentially frightening leftist move, and she does not think that anyone should have his or her home involuntarily declared historic. Chair Zack is in agreement with her. Discussion continued.

Member Kendle explained that this should not be in the Charter. He wanted to have an Ordinance requiring deconstruction of homes, so that before a home is demolished, sustainable products are saved and that will also provide a tax incentive from the Federal government. Again, he believes this is better done by Ordinance. Discussion continued.

Member Lalonde stated that there are numerous issues that must be considered before such a Charter amendment is proposed. She wants to understand the issues involved, including architectural issues; she also wants to hear from all the parties involved. Ms. Lalonde explained that this subject is very serious and has a huge impact on homeowners. Discussion held.

Chair Zack suggested that they write a letter to Mr. Bienstock to submit his proposal to the Board. City Clerk Granado to notify Mr. Bienstock.

Member Fernandez recognized Dr. Sunshine in the audience, who wanted to speak regarding homeless issues.

Member Lalonde explained that this issue was discussed at the last CRB meeting, but she appreciates Dr. Sunshine's persistence.

Rafael E. Granado, City Clerk, announced that the handout e-mailed by Dr. Sunshine on Saturday, August 3, 2013, and subsequently forwarded to the CRB members via e-mail by Mr. Granado on August 5, 2013 at 10:27 a.m. were also on the dais.

Chair Zack mentioned that several times, they have received information at the dais, and the Board should have a rule that if a document is not received at least five days before the meeting, then the item will be placed at the next meeting.

Discussion held.

Member Lalonde does not want to have people attend meetings thinking that they will have an opportunity to speak when their item is not on the agenda. However, Dr. Sunshine's issue regarding inclusion of a Homeless Bill of Rights in the Citizens' Bill of Rights was discussed at the last meeting, and the Board asked to have more information. She understands Dr. Sunshine's passion for the issue, but the Board decided that they cannot hear the item at this time.

MOTION REGARDING HOMELESS ISSUE

Motion made by Member Lalonde that the issue is out of order; seconded by Member Fernandez; Voice-vote: 6-0; Absent: Member Preira.

Rafael E. Granado, City Clerk, reported that the Homeless Bill of Rights issue has travelled through other committees, such as the Committee on the Homeless and the Miami Beach Human Rights Committee, and the proposal was rejected. However, he stated that the Board may want to reach out to the Committee of the Homeless liaison, for additional information. Member Fernandez requested information from the Committee of the Homeless as to their reasons for rejecting. Item is to be placed at the August 19, 2013 CRB Agenda. **Rafael E. Granado to handle.**

Member Kendle stated that the City of Miami signed an agreement regarding homeless persons, and now the Miami Police is afraid to take any action with homeless individuals in the City of Miami. Mr. Kendle reported that this same agreement was not signed by the City of Miami Beach.

Member Fernandez stated that Miami Beach does a good job with the homeless, and the City goes above and beyond to assist homeless individuals. Including this item in the City Charter might imply that things are being done incorrectly and the homeless' rights are being violated; and this is far from the truth.

Motion made by Member Lalonde to defer and table the item until August 19, 2013 Meeting at a time certain; seconded by Member Fernandez; Voice-vote: 6-0; Absent: Member Preira. Rafael E. Granado to place item on the agenda.

7. Electing Officials by Open Seats – Proponent Scott Diffenderfer

He clarified that he was proposing open seats. He is not prepared to present today, but explained that there are different types of open seats; in essence, how this works is that there are three seats open, and the three top vote getters fill the seats.

Member Lalonde expressed her concerns about open seats, and Member Diffenderfer explained that there are different methods, such as instant vote-off running, transferrable votes, differential voting, etc.; and these are legal in Florida.

Member Fernandez stated that he researched the preferential voting and transferrable votes methods, which he wanted to refer to CRB, and reached out to the Elections Department and apparently the i-Votronic machines that the County uses for elections at this time do not support the transferrable votes and the preferential voting. Some cities have adopted the method, pending the County to update the technology. He explained the transferrable votes method, and added that it is a more "democratic" way of holding elections, and the Good Government Institute prefer this as an alternative, as it does not deny anyone a vote. Discussion continued.

Chair Zack explained that there are books and organizations dedicated to changing the way elections are held today; he suggested deferring the item, and for Member Diffenderfer to prepare a document explaining the details of the issue. **Scott Diffenderfer to handle.**

Member Fernandez explained that there are two separate issues; 1) open seats, and 2) the way elections are handled, since the current system can be kept and at the same time use instant runoff, transferrable voting and preferential voting. He added that there are some YouTube videos that explain this issue, and he asked the City Clerk if a link could be sent to the City Clerk for distribution to all Board members. **Member Fernandez to provide the link.**

Discussion continued regarding groups and the perception people have about districts versus groups.

8. Ethics In Government Code of Conduct – Proponent Stephen Zack, Chair

Chair Zack asked if the City has and Ethics Code. Debora Turner, First Assistant City Attorney, explained that "ethics in government" is already codified in the City Code. **Chair Zack withdrew the item.**

9. Interim Report - Chair Zack requested to have an interim report, listing what has been voted on, what has been rejected, and what remains to be done, only for distribution for the Board Members in a few days before the next meeting. Rafael E. Granado to handle and a list will be provided for the August 19, 2013 Agenda.

10. Review of Existing Charter Provisions

Chair Zack suggested that each member take responsibility for the discussions of the Charter provisions each wants to review. He feels it is a waste of time to review the Charter generally and no one taking responsibility for suggesting ways to improve them. He asked each Member to look at the Charter by the next meeting, and if there are any provisions that they want to improve, along with suggested improvements. Members to submit to the City Clerk by August 9th. **All Board members to review and submit proposed changes.**

Items To Be Placed At The August 19, 2013 CRB Agenda:

Homeless Issue – proposed by Dr. Morris Sunshine

Preserving the Historical Value of Miami Beach – proposed by Terry Bienstock

Items For the September 2013 Meeting

Traffic Issues – Planning Board staff to present

Motion made to adjourn the meeting by Member Lalonde; seconded by Vice-Chair Perry; Voice-vote: 6-0. Absent: Member Preira. Meeting adjourned at 6:06:04 p.m.

Handouts and Reference Materials:

- 1. Email from Dr. Morris Sunshine dated August 3, 2013 RE: Protections for homeless people, with the following attachment: Chapter 356 2012 - S 2052 SUBSTITUTE B Enacted 06/20/12 "and An Act Relating to Property – Rhode Island Fair Housing Practices Act."

 2. Resolutions 2013-28296, 2013-28297, 2013-28298, 2013-28299, 2013-28302 & 2013-
- 3. Election Calendar for 2014 Dates
- 4. List of Candidates for the November 5, 2013 City Election, as of August 5, 2013.